In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 229

BERTRAM WASHINGTON ET AL., PETITIONERS

v.

J. HOWARD MCGRATH ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES

This is the fifth in a series of cases challenging the constitutionality of Executive Order 9835, 12 F. R. 1935. In three of the cases, *Joint Anti-Fascist Refugee Committee* v. *McGrath,* No. 8, this Term, certiorari granted on March 13, 1950,[1] *National Council of American-Soviet Friendship, Inc.* v. *McGrath,* No. 7, this Term, certiorari granted on May 15, 1950, and *International Workers Order* v. *McGrath,* No. 71, this Term, petitioners are organizations designated as communist by the Attorney General pursuant to the authority vested in him by the Executive Order. In the fourth case, *Bailey* v. *Richardson,* No. 49, this Term, certiorari granted on June 5, 1950,

[1] Petitioners herein and petitioner in the *Joint Anti-Facist Refugee Committee* case are represented by the same counsel.

petitioner, like petitioners herein, is a Government employee who was discharged after a finding that reasonable grounds exist for the belief that the person involved is disloyal to the Government of the United States.[2] The question involved in the instant case is, therefore, already before the Court. Moreover, the opinion of the court below rests on its decisions in the *Bailey* and *Joint Anti-Fascist Refugee Committee* cases. Accordingly, the Court may deem it advisable to withhold action on the instant petition until the *Bailey, Joint Anti-Fascist Refugee Committee* and *National Council of American-Soviet Friendship, Inc.* cases are decided, at which time final disposition may be made of the present case. See e. g., *Osman* v. *Douds,* 339 U. S. 846, held pending decision in *C. I. O.* v. *Douds* and *United Steelworkers of America* v. *National Labor Relations Board,* 339 U. S. 382.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

AUGUST 1950.

[2] One distinction exists between the *Bailey* case and the instant case. Although Bailey had been working and receiving a salary for some time prior to her discharge, her employment was conditional and hence her position was technically that of an applicant denied federal employment rather than that of a removed employee (see Br. in Opp., *Bailey* v. *Richardson*, No. 744, 1949 Term). The present petitioners had permanent status in the classified civil service. We shall, however, ask this Court to decide the *Bailey* case on grounds which would dispose of all issues presented by the present case as well.

U. S. GOVERNMENT PRINTING OFFICE: 1950